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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
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10 Ex parte KIMIO INOUE
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13 Appeal 2009-0242
14 Application 09/767,885
15 Technology Center 1700
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18 Oral Hearing Held: February 11, 2009
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22 Before BRADLEY R. GARRIS, LINDA M. GAUDETTE, and MARK
23 NAGUMO, Administrative Patent Judges
24

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26 ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for hearing on Wednesday,
2 February 11, 2009, commencing at 9:47 a.m., at the U.S. Patent &
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Christine
4 L. Loeser, Notary Public.

5 JUDGE GARRIS: Sir, we are generally familiar with your
6 case. So with that in mind, you have 20 minutes. Please begin.

7 MR. POUS: Thank you. The claims here are directed to an
8 extruder, and it's one in which there are screw sets, each of which has a rotor
9 segment having a kneading rotor and a screw segment comprising a screw
10 blade.

11 The claim states that the screw segment, except for the crest
12 portions, has the same sectional shape as at least one of the rotor segment --
13 at least the one rotor segment comprising the kneading rotor as viewed in the
14 transverse section, except for the tips of each of them.

15 The purpose of this is that if there is misalignment between the
16 two screw sets such that, for example, a screw segment becomes -- of one
17 screw set becomes aligned with a rotor segment of the other screw set, there
18 won't be interference because of the same sectional shape feature.

19 Ultimately, though, the real question here is one of claim
20 interpretation. It relates to what is permissible as the broadest reasonable
21 interpretation of the claim.

22 There's no question the Examiner is entitled to give the claim
23 terms their broadest reasonable interpretation, but, of course, there are limits
24 to that. It means the plain meaning of the claim as understood by those
25 skilled in the art.

26 In this particular case, what the Examiner has done, the

1 rejection is one based on anticipation in view of the applicant's earlier
2 patent. That's this Inoue patent, 5,947,593.

3 If one looks at, for example, figure 1 of this reference, there is a
4 screw segment and a rotor segment having a kneading blade, and in fact, if
5 one looks at the specification, for example, column 5, lines 9 through 19, for
6 example, it states that each of the aforesaid screw sets, one, has a screw
7 segment which pushes the material to be kneaded to the other side and an
8 integrated-type rotor segment -- let me back up.

9 Each has a screw segment 1-A and an integrated-type rotor
10 segment, 1-B, which kneads the material to be kneaded. So the reference
11 itself distinguishes between the screw segment, 1-A, for pushing the material
12 and the rotor segment, 1-B, for kneading the material.

13 Nonetheless, the position the Examiner has taken is that 1-B
14 can be both the screw segment and the rotor segment and therefore reach the
15 unremarkable conclusion that the screw segment and rotor segment can have
16 the same sectional shape since he is using the same element for both of
17 these.

18 So I think ultimately the issue here is whether that is proper or
19 not.

20 The Examiner appears to justify this based on the fact that both
21 the screw segment and the rotor segment are spiral in shape.

22 If one looks, for example, at page 5 of the Examiner's Answer,
23 middle of page 5, the Examiner states, However, it is stated by the Examiner
24 that the blades of the rotor segments have spiral angles. Therefore, segments
25 1-B are within the scope of the term screw segment, both spiral. Therefore,
26 it is a screw segment.

1 I would respectfully submit that this is a false syllogism similar
2 to saying that horses have four legs, cows have four legs; therefore, cows are
3 horses. They have a common characteristic.

4 Nonetheless, they are understood by those skilled in the art as
5 being different elements which are distinguishable and which would not be
6 interchanged.

7 As evidence of this, we have, of course, the Inoue reference
8 itself which uses separate terms for the two. It doesn't say that 1-A is a
9 screw segment for advancing and 1-B is a screw segment for kneading. It
10 uses the two distinct terms.

11 More particularly, we have submitted a declaration, at least one
12 declaration by Mr. Inoue, and in that declaration, if, for example, paragraphs
13 6 and 7 say that the kneading rotor, that kneading rotor is a term of art in the
14 field of plastic kneaders and extruders and that those skilled in the art would
15 understand that a kneading rotor has a kneading blade with a structure to
16 optimize the kneading of the plastic material to be extruded, paragraphs 7
17 and -- 8 and 9, rather, say that a screw segment is a term of art in the field of
18 plastic kneaders and extruders, and that those skilled in the art would
19 understand that a screw segment has a structure to optimize the axial
20 advancement of the plastic material.

21 In the kneader extruder, they have different structures
22 optimized for different purposes.

23 And paragraph 11 says in light of the well-understood
24 functional and structural distinction in the art between a rotor segment
25 comprised of at least one kneading rotor and a screw segment, those skilled
26 in the art would not identify an element designed and used as a rotor element

1 in an extruder as a screw element, so -- a screw segment, rather.

2 So we have the declaration of Mr. Inoue. The Examiner has
3 dismissed this declaration because he has pointed out discrepancies in the
4 exemplary, exemplary angular ranges for screw segments versus rotor
5 segments in the declaration versus statements made in the reference.

6 They are not exactly the same ranges. However, this does not
7 negate or detract from the very clear evidence which has not been refuted in
8 the Inoue declaration that the blades of one versus the blades of another are
9 optimized for different purposes, and one skilled in the art would not
10 interpret, would not call a kneading segment a -- or a rotor segment, a screw
11 segment or vice versa.

12 We therefore respectfully submit that the Examiner cannot
13 properly use the two different elements -- excuse me -- use the same element
14 in the reference for the two separate elements in the claim. It goes beyond
15 the plain meaning as understood by those skilled in the art, and therefore, the
16 rejection should be reversed.

17 JUDGE GARRIS: Judge Gaudette, any questions?

18 JUDGE GAUDETTE: No.

19 JUDGE GARRIS: Judge Nagumo?

20 JUDGE NAGUMO: No.

21 JUDGE GARRIS: Mr. Pous, thank you very much for helping
22 us understand these issues. We have no questions for you.

23 MR. POUS: Thank you very much.

24 JUDGE GARRIS: Thank you, sir.

25 Whereupon, the proceedings at 9:56 a.m. were concluded.